

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

EDUARDO R. CANALES,	§	
Petitioner,	§	
v.	§	C.A. NO. C-06-266
	§	
NATHANIEL QUARTERMAN,	§	
Respondent.	§	

**ORDER DENYING PETITIONER'S
MOTION FOR AN EVIDENTIARY HEARING**

Petitioner is a state inmate currently incarcerated at the Ferguson Unit in Midway, Texas who has filed an amended habeas petition pursuant to 28 U.S.C. § 2254. (D.E. 17). Pending is petitioner's motion for an evidentiary hearing. (D.E. 21).

Rule 8(a) of the Rules Governing Section 2254 Cases states that "[i]f the petition is not dismissed, the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted." Rule 8(c) further requires that "[t]he judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare." The Fifth Circuit has explained that "[a] hearing in a habeas proceeding is required only when, *inter alia*, the record reveals a genuine factual dispute." Tague v. Puckett, 874 F.2d 1013, 1015 (5th Cir. 1989) (emphasis added); see also Murphy v. Johnson, 205 F.3d 809, 815 (5th Cir. 2000) (discussing basis for evidentiary hearing).

Petitioner is challenging his conviction on December 13, 2004 in the 28th Judicial District Court in Nueces County for aggravated robbery. (D.E. 17, at 1). In the pending motion, he argues an evidentiary hearing regarding his ineffective assistance claim. (D.E. 21). In his answer, respondent asserts that petitioner is not entitled to any relief, (D.E. 19), but has not filed

a dispositive motion yet. Any dispositive motion must be filed no later than February 7, 2007. (D.E. 20). Respondent may concede that an evidentiary hearing is necessary, or it may be deemed necessary after additional briefing, but at this stage, an evidentiary hearing is premature.

Accordingly, petitioner's motion for an evidentiary hearing, (D.E. 21), is hereby DENIED without prejudice.

ORDERED this 17th day of November 2006.



BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE